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By ECF

August 22, 2024

The Honorable Cathy Seibel
United States District Judge
United States Courthouse
300 Quarropas Street
White Plains, NY 10601

Re: United States v. Justin Patterson
19 Cr. 231 (CS)

Dear Judge Seibel:

We write to apprise the Court that the Government has informed us – both earlier this week and again yesterday – that it is unable to locate Victoria Lozada, whose testimony was supposed to be the centerpiece of Monday’s hearing. We oppose any further adjournments of Mr. Patterson’s sentencing and request that it proceed on Monday. If Ms. Lozada, who we understand has been served with a subpoena to testify, continues to hide from the Government and shirk her obligations to appear, we believe the Court should disregard all of her statements, including those already proffered or transmitted to the Court.

The Government informs us that, should it remain unable to locate its witness, it will move to admit her statements as hearsay. We oppose the admission of this dubious hearsay as a violation of due process. *United States v. Martinez*, 413 F.3d 239, 244 (2d Cir. 2005). Further, while we acknowledge that the Second Circuit holds that the Confrontation Clause does not apply at Fatico hearings, we object to admitting Ms. Lozada’s out-of-court statements on due process grounds as well to preserve the issue. Finally, should the Court receive Ms. Lozada’s out-of-court statements over our objections – and absent any ability for us to cross examine her – we will request to call between four and five witnesses to impeach the hearsay. *Cf.* Fed. R. Evid. 806. We have provided 3500 material for those witnesses to the Government and the Court.

We note that even if Ms. Lozada surfaces in the next 72 hours, it is all but

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impossible that she will be able to testify on Monday as she needs to have counsel appointed and confer with that counsel, who may well advise her to assert the Fifth Amendment. In addition to what we believe are clear misstatements that she has made to the Government about her interactions with Mr. Patterson and his family, she has also made false statements about why she was unable to appear in court.

A hearing date was previously scheduled for May 13, 2024. On May 8, the Government could not locate Lozada and on Thursday May 9, it requested to adjourn the hearing scheduled for the following Monday because Lozada had childcare issues. Shortly before the July 1, 2024 date to which the hearing had been adjourned, the Government informed us that it had located Ms. Lozada and subpoenaed her to testify, but that she could not appear on July 1 because she was “moving.” We did not oppose that adjournment request. But we then obtained and provided the Government with photographs of Ms. Lozada attending a party the evening of June 30, *i.e.*, 36 hours before the hearing that she was supposedly too exhausted from moving to attend.

On July 12, 2024, at 7:27 pm, we alerted the Government that Ms. Lozada had requested counsel:

Jim, I spoke with Victoria Lozada this evening and she told me she would like to have a lawyer to represent her in this matter. It's probably easier if you ask the Court to appoint one, but we can as well. Please let us know.

The Government responded the following day that it would help her obtain counsel. We followed up on August 8, 2024, to inquire whether Ms. Lozada had been appointed counsel. The Government responded that it expected to get her counsel “this week.” Upon reviewing 3500 material produced this week, we see that on the evening of July 12, presumably after our 7:27 email alerting the Government that Ms. Lozada wanted counsel and providing the phone number that she used to call us, the Government spoke with her at length but did not then ask to have counsel appointed. The Government spoke with Ms. Lozada again on July 30, 2024, and she reiterated that she wanted counsel appointed. To our knowledge, Ms. Lozada still has not had counsel appointed. Thus, should Ms. Lozada surface between now and Monday, she will need to have a lawyer appointed and time to speak with that lawyer. There is almost no way she we will able to testify on Monday given the Government’s failure to secure counsel for her sooner.

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In short, based on the foregoing, we respectfully request that the Court maintain Mr. Patterson's sentencing date this coming Monday and exclude and disregard any out-of-court statements by a witness who refuses to testify and who hides from authorities who have subpoenaed her. Even if she does appear between now and then, she will need time to communicate with counsel who the Government should have secured over one month ago; and the Government, not Mr. Patterson, should bear the burden of that delay.

Respectfully submitted,

/s/
Andrew G. Patel
Benjamin Silverman
Counsel for Justin Patterson

cc: All counsel by ECF

Even if Ms. Lozada is not present, the hearing will go forward on Monday if either side intends to call anyone other than Ms. Lozada, and I will decide about admitting her statements, or not, before we start. If Defendant wants to have impeachment witnesses on standby should I admit Ms. Lozada's statements, the Court can take their testimony in the afternoon, so they will not need to come unless I rule for the Government. And we will go right into the sentencing.

8/23/24

SO ORDERED.


CATHY SEIBEL, U.S.D.J.